

Surface Mining Reclamation and Enforcement, Interior

§ 732.17

(10) Provide for public participation in the development, revision and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter;

(11) Monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations, by employees of the State regulatory authority, consistent with 30 CFR 705;

(12) Require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives consistent with regulations issued by the Secretary, except that no State program is required to implement this provision until six months after Federal regulations for this provision have been promulgated;

(13) Provide for small operator assistance.

(14) Provide for administrative review of State program actions, in accordance with section 525 of the Act and subchapter L of this chapter;

(15) Provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act, except that judicial review of State enforcement actions shall be in accordance with section 526 of the Act. Judicial review in accordance with State law shall not be construed to limit the operation of the rights established in section 520 of the Act, except as provided in that section.

(16) Cooperate and coordinate with and provide documents and other information to the Office under the provisions of this chapter.

(c) The State laws and regulations and the State program do not contain provisions which would interfere with or preclude implementation of those in the Act and this chapter.

(d) The State regulatory authority and other agencies having a role in the State program have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of

paragraph (b) of this section, and other applicable State and Federal laws.

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 53384, Oct. 28, 1981; 47 FR 26366, June 17, 1982; 48 FR 2272, Jan. 18, 1983; 48 FR 44779, Sept. 30, 1983]

§ 732.16 Terms and conditions for State programs.

Terms and conditions for the implementation, administration and operation of a State program may be established by the Director as necessary, including, but not limited to—

(a) Establishing a system for regularly reporting to the Office information collected by the State regulatory authority in the conduct of the State program; and

(b) Providing the Office with access to books and records of the regulatory authority upon request.

[44 FR 15326, Mar. 13, 1979]

§ 732.17 State program amendments.

(a) This section applies to any alteration of an approved State program whether accomplished on the initiative of the State regulatory authority or the Director. Such alterations are referred to in this section as “amendments”.

(b) The State regulatory authority shall promptly notify the Director, in writing, of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. At a minimum, notification shall be required for—

(1) Changes in the provisions, scope or objectives of the State program;

(2) Changes in the authority of the regulatory authority to implement, administer or enforce the approved program;

(3) Changes in the State law and regulations from those contained in the approved State program;

(4) Significant changes in staffing and resources of the regulatory authority and divisions or departments of other agencies with duties in the approved program;

(5) Changes in agreements between the regulatory authority and other

agencies which have duties in the approved program;

(6) Significant changes in funding or budgeting relative to the approved program; and

(7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State.

(c) Within 30 days of receipt of notification, in writing, of events or proposed changes that may require a State program amendment, or whenever the Director becomes aware of conditions described in paragraph (e) of this section, the Director shall determine whether a State program amendment is required and notify the State regulatory authority of the decision.

(d) The Director shall promptly notify the State regulatory authority of all changes in the Act and the Secretary's regulations which will require an amendment to the State program.

(e) State program amendments may be required when—

(1) As a result of changes in the Act or regulations of this chapter, the approved State program no longer meets the requirements of the Act or this chapter; or

(2) Conditions or events change the implementation, administration or enforcement of the State program; or

(3) Conditions or events indicate that the approved State program no longer meets the requirements of the Act or this chapter.

(f)(1) If the Director determines that a State program amendment is required, the State regulatory authority shall, within 60 days after notification of that decision, submit to the Director either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of the Act and this chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

(2) If the State regulatory authority does not submit the proposed amendment or description and the timetable for enactment within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved under this Section, the Director shall begin proceedings under 30

CFR part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

(g) Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.

(h) The following procedures, time schedules and criteria for approval and disapproval shall apply to State program amendments.

(1) Within ten days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the FEDERAL REGISTER.

(2) The FEDERAL REGISTER notice announcing the receipt of the amendment will indicate that the amendment(s) is being reviewed by the Director and will include the following:

(i) The text or a summary of the amendment(s) proposed by the regulatory authority;

(ii) Addresses where copies of the proposed amendment(s) may be obtained if the text is not included in the FEDERAL REGISTER notice and that each requestor may receive, free of charge, one single copy of proposed amendment(s) from the Director.

(iii) Date(s) of public comment period(s) and addresses where public comments should be directed;

(iv) Dates and locations of public hearing(s) and/or meeting(s) if public hearing(s) and/or meeting(s) are to be held; and

(v) A schedule for review and action on the amendment(s).

(3) A minimum public comment period of 30 days will be provided for each proposed State program amendment, except a 15 day public comment period may be provided where an amendment concerns changes in State law, regulations or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations: *Provided*, That the notice of receipt published in the

FEDERAL REGISTER includes the full text of the proposed amendment: *And provided*, That all applicable provisions of 43 CFR part 14 are complied with.

(4) All State program amendments which may have an effect on historic properties shall be provided to the State Historic Preservation Officer and to the Advisory Council on Historic Preservation for comment.

(5) Public hearings may be provided at the discretion of the Director and shall be held no sooner than five days before the close of the public comment period. The comment period shall end on a date following any public hearing scheduled to be held.

Public hearing plans will be announced in the notice of receipt of the amendment published in the FEDERAL REGISTER. In determining whether to hold a public hearing, the Director will consider the subject of the amendment, its complexity and public hearing and meetings conducted by the State regulatory authority prior to submission of the amendment for OSM approval. When State regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the State regulatory authority shall provide to the Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments. Hearings shall be informal and follow legislative procedures. The format and the rules of procedure for each hearing shall be determined by the Director and published in the notice required by paragraph (h)(1) of this section.

(6) Upon the close of the public comment period, the transcript, written presentations, exhibits and copies of all comments shall be transmitted to the Director.

(7) The Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of the public comment period established in accordance with § 732.17(h)(3).

(8) If the Director disapproves the amendment request, the State regulatory authority will have 30 days after publication of the Director's decision to resubmit a revised amendment re-

quest for consideration by the Director.

(9) The Director will approve or disapprove amendment resubmissions within 30 days after receipt. There shall be a public comment period of not less than 15 days from the date of publication of the notice of receipt of the revised amendment. If the scope of the amendment has been expanded beyond that of the initial amendment request the Director may approve/disapprove portions of the initial amendment request and subject the remainder to review and approval procedures outlined in this paragraph or treat the entire amendment request as a new request and initiate the review procedures of this section.

(10) The applicable criteria for approval or disapproval of State programs set forth in § 732.15 shall be utilized by the Director in approving or disapproving State program amendments.

(11) State program amendments shall not be approved until the Director has—

(i) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed; and

(ii) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(12) All decisions approving or disapproving program amendments shall be published in the FEDERAL REGISTER and shall be effective upon publication unless the notice specifies a different effective date. The decision approving or disapproving program amendments will be published in the FEDERAL REGISTER within 10 days after the date of the Director's decision.

(13) The Director shall complete actions on amendment requests in accordance with the schedule developed

under paragraph (h)(2)(v); *However*, final action on all amendment requests must be completed within six months after receipt of the proposed amendments from the State.

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 7909, Jan. 23, 1981; 47 FR 26366 and 26367, June 17, 1982; 52 FR 4261, Feb. 10, 1987]

PART 733—MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

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AUTHORITY: Secs. 501(b), 503, 504, 517 and 521, Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254, 1267 and 1271).

SOURCE: 44 FR 15328, Mar. 13, 1979, unless otherwise noted.

§ 733.1 Scope.

This part establishes requirements for the maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

§ 733.10 Information collection.

The information collection requirement contained in 30 CFR 733.12(a)(2) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0025. The information required is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

[47 FR 26366, June 17, 1982]

§ 733.11 General requirements for maintaining State programs.

States with an approved State program shall implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program.

§ 733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

(a) *Evaluation.* (1) The Director shall evaluate the administration of each state program at least annually.

(2) Any interested person may request the Director to evaluate a State program. The request shall set forth a concise statement of the facts which the person believes establishes the need for evaluation. The Director shall verify the allegations and determine within 60 days whether or not the evaluation shall be made and mail a written decision to the requestor.

(b) If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing. The Director's notice shall—

(1) Provide sufficient information to allow the State regulatory authority to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced;

(2) State the reasons for such belief; and

(3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

(c) The Director shall provide the State regulatory authority an opportunity for an informal conference if the State requests an informal conference within 15 days after the expiration of the time period specified in paragraph (b)(3) of this section. The informal conference may pertain to the facts or the time period for accomplishing remedial actions as specified by the Director's notification.

(d) If an informal conference is not held under paragraph (c) of this section, or if, following such a conference, the Director still has reason to believe